

MAINE REVENUE SERVICES
PROPERTY TAX DIVISION
RULE NO. 207

REAL ESTATE TRANSFERS

Summary: This rule sets forth the State Tax Assessor's construction of Maine law applying the real estate transfer tax to the transfer or acquisition of a controlling interest in an entity with a fee interest in real property located in this State.

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.01 Introduction

PL 2001 Chapter 559, effective March 25, 2002, enacted a provision whereby the transfer or acquisition within any 12-month period of a direct or indirect controlling interest in any entity with a fee interest in real property located in this state for which a deed is not given is subject to Maine's real estate transfer tax. See generally 36 MRSA Chapter 711-A and in particular section 4641-A, sub-§2. The new law applies to controlling interest transactions occurring on or after June 1, 2002, except for transactions made pursuant to contracts executed prior to March 1, 2002. This rule sets forth the State Tax Assessor's construction of various aspects of the tax on controlling interest transactions.

.02 Definitions

As used in this rule, unless the context otherwise indicates, the following terms have the following meanings:

A. Assessor. "Assessor" means the State Tax Assessor.

B. Bureau. "Bureau" means the State of Maine Bureau of Revenue Services, also known as "Maine Revenue Services."

C. Consideration. "Consideration" means the total price or amount paid, or required to be paid, for real property valued in money, whether received in money or otherwise and includes the amount of any mortgages, liens or encumbrances thereon, regardless of whether the underlying indebtedness is assumed by the grantee.

D. Controlling interest. "Controlling interest" means: (i) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation

entitled to vote, or fifty percent or more of the capital, profits, or beneficial interest in the voting stock of the corporation; and (ii) in the case of a partnership, association, irrevocable trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity.

E. Controlling interest transfer. "Controlling interest transfer" means the transfer or acquisition within any 12-month period of a direct or indirect controlling interest in any entity with a fee interest in real property located in this state for which a deed is not given.

F. Date of transfer. "Date of transfer" means the date when ownership of or title to real property, or control of the controlling interest in an entity which has a beneficial interest in real property, is delivered to the transferee in exchange for consideration.

G. Person. "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, irrevocable trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the State of Maine or any political subdivision thereof, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any agency or instrumentality thereof.

H. Real property. "Real property" means land or anything affixed to land. The term includes, but is not limited to, improvements such as buildings, mobile homes other than stock-in-trade, lines of electric light and power companies and pipelines, and other things constructed or situated on land when the owner of the improvements is not the landowner.

I. Return. "Return" means the combined "Controlling Interest Transfer Tax Return/Declaration of Value" form prescribed and furnished by the State Tax Assessor.

J. Taxpayer ID number. "Taxpayer ID number" means federal taxpayer identification number, except with respect to an individual, in which case it means social security number.

K. Twelve-month period. "Twelve-month period" is any period of 365 consecutive days and may span two calendar years.

L. Value. "Value" means, in the context of the transfer of a controlling interest in an entity with a fee interest in real property located in Maine, the amount of consideration paid for that property, except in the case of a gift. When the consideration cannot be determined, "value" is equal to the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

.03 Application of tax in general

In order for the tax to apply when a controlling interest in an entity that has a fee interest in real property in this state has been transferred, the following must all apply: (a) the controlling interest must be directly or indirectly transferred by a single person or acquired by a single person or group of persons acting in concert, and if a series of transactions is involved, they must all have occurred within a twelve-month period; (b) a deed must not have been given for the conveyed interest in Maine real property in question; (c) the entity in question must have an ownership interest in real property that is located in this state; and (d) the transfer must not otherwise be exempt under 36 MRSA § 4641-

C. A controlling interest transfer is exempt from the real estate transfer tax if the transfer would qualify for exemption if it were accomplished by deed.

Example 1. A and B each own 40% of the voting shares of a corporation. C, D, E and F each own 5% of the voting shares. Within a single 12-month period, C acquires B's 40% interest and D's and E's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by C (40% from B plus 5% from D and 5% from E). However, if C, D and E were to transfer their shares (totaling 15%) to A, those transfers would not be taxable; although A would now own 55% of the corporation, only a 15% interest was transferred and acquired within a 12-month period, so the acquisition by A is not taxable.

Example 2. A, B, C and D each own 25% of the voting shares of Corporation X. In a single transaction occurring on the same day, Corporation X redeems the shares of B, C and D. A taxable transfer has occurred, because X has purchased 75% of its stock. The measure of the tax is the value of the Maine real property owned by Corporation X. B, C, D and X are liable for payment of the real estate transfer tax.

Example 3. A owns 80% of the voting shares of a corporation. A transfers within a 12-month period, in two separate and unrelated transactions, his entire block of shares to B and C, each of whom then owns a 40% interest in the corporation. A taxable transfer of a controlling interest has occurred, even though no one has subsequently acquired a controlling interest, and regardless of whether B and C are acting in concert.

Example 4. Consider a limited partnership consisting of a general partner and three limited partners; each possesses a 25% interest. Even though the general partner controls the management and day-to-day operations, a 25% interest is not a controlling interest. Only if someone were to acquire at least a 50% interest from at least two of the partners within a 12-month period would a taxable acquisition of a controlling interest occur. If one partner acquires an additional 25% interest from another partner for a total of a 50% interest, no transfer or acquisition of a controlling interest occurs because less than 50% is conveyed or acquired.

Example 5. Corporation Alpha has 2 stockholders, A and B, who together own 100 outstanding shares of stock. A owns 90 shares (90%) and B owns 10 shares (10%). Alpha owns 60% of the stock of Corporation Omega, which owns Maine real property. A, by virtue of owning 90% of the Alpha's stock, has a 54% interest in Omega (90% interest in Alpha multiplied by the 60% interest Alpha has in Omega equals the 54% interest A has in Omega). A sells his 90 shares of stock in Alpha to B. A, by selling his 90 shares of Alpha stock, has transferred a controlling interest (54%) in an entity that owns Maine real property (Omega). This transfer is subject to the real estate transfer tax. The real estate transfer tax due is computed on value of the Maine real property owned by Omega.

Example 6. Assume the same facts as in Example B-5, except that Alpha owns only 50% of Omega's stock. Since A has not transferred and B has not acquired a controlling interest in Omega (90% X 50% = 45%), the real estate transfer tax does not apply. If, however, Alpha had transferred its 50% interest in Omega, that would have been the transfer of a controlling interest and would be subject to the real estate transfer tax.

.04 Persons acting in concert

All acquisitions made within a 12-month period by persons acting in concert are aggregated for purpose of determining whether a transfer or acquisition of a controlling interest has taken place.

A. Common ownership. "Acting in concert" occurs when persons have a relationship with each other such that one person influences or controls the actions of another person or persons through common ownership. For example, if a parent corporation and a wholly-owned subsidiary acting under the direction of the parent each purchase a 25% interest in an entity, the two corporations have acted in concert and acquired a controlling (i.e., at least 50%) interest in the entity.

B. Unity of purpose. "Acting in concert" also occurs when purchasers are not commonly controlled or influenced, but the unity with which they have negotiated and consummated the transfer of ownership interests supports a finding that they are acting as a single entity. For example, three individuals who together decide to jointly acquire control of a company through separate purchases of 20% interests in the company act in concert when they acquire the interests within a 12-month period. If, on the other hand, the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, the acquisitions are considered separate acquisitions. Factors to be considered in determining whether persons are acting in concert include, without limitation: (a) a close relation in time of the conveyances or acquisitions; (b) contractual terms indicating unity of purpose; (c) agreements between the purchasers that bind them to a course of action with respect to the transfer or acquisition; (d) a small number of purchasers.

Example 1. A owns 100% of Corporation, which owns Maine real property. As a group, B, C, D, and E negotiate to acquire all of A's interest in Corporation. B, C, D, and E each acquire 25% of A's interest. The contracts of B, C, D, and E are identical and the purchases occur simultaneously. B, C, D, and E also negotiated an agreement binding themselves to a particular course of action with respect to the acquisition of Corporation, and to the terms of a shareholder agreement that will govern their relationship as owners of Corporation. B, C, D, and E are acting in concert and their acquisitions from A are treated as a single acquisition of a controlling interest which is subject to the real estate transfer tax.

Example 2. Corporation X owns real property and has two shareholders, A and B. Each owns 50% of the corporation's stock. In August of 2002, A and B decide together to convey a percentage of their ownership interests. On August 20, 2002, A and B each convey stock equaling 12 1/2 percent of their ownership interests to C (who thereby acquires 25% of the corporation's stock). On June 27, 2003, A and B each convey stock equaling 15% of their ownership interest to D (who thereby acquires 30% of the corporation's stock). Although A and B have acted in concert, they are the transferors of the interest, and only the activities of those persons acquiring the interest are aggregated. Assuming C and D did not act in concert, their acquisitions cannot be aggregated, and because neither C nor D individually acquired a controlling interest as a result of the transfers, the transfers are not subject to the real estate transfer tax.

Example 3. Partnership X owns real property and consists of two partners, A and B. Each has a 50% partnership interest. In August of 2002, A and B decide together to convey a

percentage of their partnership interests. On August 20, 2002, A and B each convey 12 1/2 percent of their respective partnership interests to C (who thereby acquires a 25% partnership interest). On June 27, 2003, A and B each convey a 15% partnership interest to D (who thereby acquires a 30% partnership interest). Partnership X has, by and through its partners, conveyed a controlling (55%) interest in itself, and therefore a taxable transaction has occurred.

.05 Persons liable for tax

As in the case of deed transfers, the transfer tax on a controlling interest transfer is imposed 1/2 on the transferor and 1/2 on the transferee. However, if a taxable conveyance or acquisition of a controlling interest is not reported to the register of deeds in the county or counties in which the property is located and the tax is not paid within 30 days of the completion of the conveyance or acquisition, the transferor and the transferee are jointly and severally liable for the full amount of the tax. Any party to a controlling interest transfer that has reported the sale to the register of deeds and paid its 1/2 share of the tax within thirty days is absolved from liability for any further tax due. When a controlling interest is transferred through a series of transactions, each seller and buyer is liable for its proportional share of tax based on the value of the property on the date of sale as provided in section .08.

.06 Date of sale

When a controlling interest is acquired in one transaction, the date on which control is actually transferred is considered the date of sale. When the conveyance or acquisition of a controlling interest involves two or more transactions occurring within a single 12-month period (including acquisitions made by persons acting in concert) the selling price of each conveyance or acquisition is determined as of the actual date of that conveyance or acquisition. Multiple transfers of up to 100% of the ownership interests in the same entity by the same seller within a 12-month period are aggregated and must be treated as a single taxable transaction. The actual date on which control is transferred, and not the date of the contract arranging the transfer, is what determines whether a transaction falls within the 12-month period.

.07 Tax imposed on value of property

The real estate transfer tax is imposed on the value of the real property in this state owned by the entity in which a controlling interest has been directly or indirectly conveyed or acquired. Value is determined as of the date of sale. "Value" means the amount of the actual consideration paid for the real property in question. If the price paid for the real property cannot be determined, or if the transfer is a gift, "value" is based on the reasonable estimated price the real property would bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels. Any assertion of value based on estimated price is subject to review by the State Tax Assessor. In making a determination of whether an estimate is reasonable, the Assessor may consider any or all of the following: (a) a fair market value appraisal of the property; (b) an allocation of assets by the seller or the buyer made pursuant to section 1060 of the Internal Revenue Code and reported to the Internal

Revenue Service; and (c) the full market value assessment for the property based on the municipal property tax rolls on the date of sale.

Example 1. On January 30, A acquires from X a 10% interest in an entity that owns a Maine apartment building under construction worth \$500,000 at that time. On July 30, A acquires a 30% interest in the same entity from Y, but the building is now worth \$900,000. On September 30, A acquires a 10% interest in the same entity from Z, but the building is now worth \$1,000,000. With the final transfer, A has acquired, within 12 months, a controlling interest in an entity that owns real property. To determine the sellers' proportional tax liability in this example, the series of transactions is viewed as a whole. Note both the individual and the total interests conveyed. Here, X and Z each conveyed 10% interests, while Y conveyed a 30% interest, with a total of a 50% interest being conveyed. To determine the tax liability percentage for each seller, divide the interest each conveyed by the total interest conveyed (X and Z: $10/50 = 20\%$; Y: $30/50 = 60\%$). This results in tax liability percentages for X and Z of 20% each and for Y of 60%. The value of the property to which the percentage applies depends upon the value of the property at the time of each transfer, i.e., \$500,000 in the case of X (20% of \$500,000), \$540,000 in the case of Y (60% of \$900,000) and \$200,000 in the case of Z (20% of \$1,000,000). The buyer (A) is liable for its $\frac{1}{2}$ share of the tax imposed on each of these three transactions.

.08 Filing of Return/Declaration and payment of tax

A. Generally. A controlling interest transfer must be reported to the register of deeds in the county or counties in which the real property in question is located on a "Controlling Interest Transfer Tax Return/Declaration of Value" in affidavit form as prescribed and furnished by the State Tax Assessor. The person filing the return must include its taxpayer ID number and any other information reasonably required by the Assessor. Supplemental sheets should be attached to the return if necessary. In the event a person has no taxpayer identification number, an affidavit explaining the reason should be attached.

B. Due date. The return must be completed in duplicate and submitted within 30 days of the date of the conveyance or acquisition, provided that the parties to the transaction know that a controlling interest transfer has occurred. In cases where a controlling interest transfer occurs as the result of a series of separate transactions, the return must be submitted within 30 days of the date of the individual transaction that causes the 50% controlling interest threshold to be met. The party responsible for submitting the return in this situation is the party in a position to know that a controlling interest transfer has occurred: i.e., the party that either transfers or acquires the controlling interest. This person must also complete pro forma declarations on behalf of the parties to any other transactions contributing to the controlling interest transfer for which declarations have not been filed; those parties will then be subject to an assessment for their share of the transfer tax.

Example: On January 1, Buyer purchases from Seller 1 a 20% interest in Corporation X, which owns Maine real property. A controlling interest transfer has not occurred, and neither Buyer nor Seller 1 has an obligation to submit a return to the register of deeds. On March 1, Buyer purchases from Seller 2 another 20% interest in Corporation X. Again, a controlling interest transfer has not occurred, and neither Buyer nor Seller 2 needs to submit a return. On

May 1, however, Buyer purchases from Seller 3 another 20% interest in Corporation X. Buyer now has reason to know that a controlling interest transfer has occurred, and Buyer must therefore submit a return, taking all three transactions into consideration when computing the tax. Seller 3 may or may not know that a controlling interest transfer has occurred; if it does, it may submit a return jointly with Buyer and pay its share of the tax due on the May 1 transfer. In any event, Buyer must submit pro forma returns providing information sufficient to apprise the State Tax Assessor of the identity of the sellers.

C. Signature; payment. When both parties to the transaction know that a controlling interest transfer has occurred, the return must be signed by both the transferor and the transferee and must be accompanied by full payment of their tax. When a return is signed by only one party to a transaction and submitted to the register of deeds along with that party's share of the transfer tax due, as in the case of controlling interest transfer accomplished through a series of transactions, the reporting party will not be held liable for the non-reporting party's share of the transfer tax.

D. Separate counties. When the Maine real property is located in more than one county, the tax must be divided among the counties in the same proportion in which the real property value is distributed among the counties. Any dispute between counties as to the proper amount of tax due to each as a result of a particular transaction will be decided by the Assessor upon the written petition of an official authorized to act on behalf of the county.

E. Exemptions. If the transfer is not taxable due to an exemption, that exemption should be claimed and specifically identified on the face of the return.

F. Declarations to be transmitted to State Tax Assessor. No later than the 10th day of each month, the register of deeds for each county must transmit to the State Tax Assessor the Controlling Interest Transfer Tax Returns/Declarations of Value that it has received during the prior month.

.09 Transition rule

Controlling interest transactions made pursuant to contracts executed prior to March 1, 2002 are exempt from the real estate transfer tax. Such transactions are also exempt from inclusion in any determination of whether a conveyance or acquisition of a controlling interest occurred within the statutory 12-month period.

AUTHORITY: 36 M.R.S.A. § 4641-E.

EFFECTIVE DATE: September 13, 1987

REPEALED AND REPLACED: January 7, 2003
